

N.D.A.G. Letter to Elhard (Aug. 2, 1985)

August 2, 1985

Mr. Terry W. Elhard
McIntosh County State's Attorney
P.O. Box 248
Ashley, ND 58413

Dear Mr. Elhard:

Thank you for your letter of July 24, 1985, concerning residency for purposes of attending school in North Dakota.

Unfortunately, the rules and regulations concerning residency are not clear and distinct. Indeed, our North Dakota Supreme Court has indicated that the residence of a party is a question of fact rather than of law and is determined primarily through the intention of the party in question. Wehrung v. Ideal School District No. 10, 78 N.W.2d 68 (N.D. 1956); Dietz v. City of Medora, 333 N.W.2d 701 (N.D. 1983).

There are seven rules of residency which may be consulted in attempting to determine one's place of residence. These rules are found in N.D.C.C. §54-01-26. Furthermore, the Supreme Court cases annotated under this section, including those mentioned above, contain factual determinations which need to be made in determining one's residency.

Our best advice and counsel is to apply the facts in each and every particular case against the various guidelines and rules of residency available by statute and case law. However, in the end, as residency is a question of fact depending upon the intention of the party, it is the intent of the party which is paramount in attempting to determine one's residency. Of course, one of the various rules of residency is that there can only be one residence at any one time. N.D.C.C. §54-01-26(2). This suggests that a residence cannot be split depending upon the purpose for which the question of residency has been raised.

Sincerely,

Nicholas J. Spaeth

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